

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209338

DATE: April 1, 1983

MATTER OF: Brown Boveri Electric, Inc.

DIGEST:

Bid was improperly rejected as nonresponsive where an unsolicited equipment instruction manual submitted with the bid took exception to the IFB specifications in an immaterial respect and where another provision of the instruction manual which could be read so as to conflict with the IFB specifications was superseded by a "supplement," also included with the bid, which conformed to the specifications.

Brown Boveri Electric, Inc., protests the rejection of its bid as nonresponsive by the U.S. Army Corps of Engineers under invitation for bids (IFB) No. DACW67-82-B-0022 seeking 15 kV circuit breakers and grounding equipment for the Chief Joseph Dam, Columbia River, Washington.

We sustain the protest.

Two firms, Westinghouse Electric Corporation and Brown Boveri, responded to the IFB; upon the Corps' rejection of Westinghouse's bid as nonresponsive, Brown Boveri's bid was considered for award. Although there was no requirement in the IFB for descriptive literature, Brown Boveri's bid included an instruction manual for the Type DBV circuit breaker it offered and a supplement to that manual. Since these instruction manuals described the equipment Brown Boveri intended to furnish, the Corps reviewed them to determine if the Type DBV circuit breaker conformed to the technical requirements of the IFB.

Paragraph TP 3-3.2.1 of the specification as amended requires, with respect to main generator circuit breakers, that "the minimum number of no-load energized operations before circuit breaker inspection and maintenance shall be 2000 operations." Brown Boveri's instruction manual for the Type DBV circuit

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breaker recommended inspection not less than "once each 1000 close-open operations" and after each 200 operations "inspect and, if necessary, tighten stationary contacts." A supplement to this manual, which expressly superseded the basic manual in the event of conflict, required tightening of the circuit breaker interruptor contacts after the first 200 close-open operations and every 5000 operations thereafter.

The Corps concluded that the instruction manual did not satisfy the specification requirement for operation 2000 times without inspection and maintenance. Further, the Corps did not view the manual supplement as curing this failure, since the supplement did not purport to modify inspection intervals and it did not eliminate the need for initial maintenance after the first 200 operations in any event. Based on its review, the Corps rejected Brown Boveri's bid as nonresponsive, which rejection Brown Boveri timely protested to this Office.

Brown Boveri protests that the descriptive literature provided with its bid was not intended to qualify its bid but was expressly provided for information only. Brown Boveri contends that its bid took no exception to the specification and that it fully intended to supply conforming equipment, which easily could be accomplished by operating and adjusting the circuit breaker in the factory, thereby avoiding the need for the initial maintenance adjustment after 200 operations. Finally, Brown Boveri argues that because the operations described in its instruction manual are fully-energized, full-load operations, while those in the specification are not, its equipment satisfies the specification requirements for maintenance under conditions more rigorous than those specified.

The inclusion of unsolicited descriptive literature that does not conform to the specification does not automatically mandate rejection of the bid. 49 Comp. Gen. 851 (1970); Hughes-Henry Equipment Co., B-200049, November 5, 1980, 80-2 CPD 338. Rather, the intent of the bid must be constructed from a reasonable interpretation of its entire contents including any unsolicited literature. Where the unsolicited literature refers to the model number of the equipment offered in the bid, as did the instruction manual here, there exists a sufficient relationship between the bid and the descriptive literature such that the literature may not be disregarded. Devault Manufacturing Company, B-195959, January 7, 1980, 80-1 CPD 18.

Consequently, we believe that the contracting officer was required to consider the descriptive literature when reviewing Brown Boveri's bid, despite the disclaimer that the literature was for information only.

With regard to what the literature showed, the Army expressed two major concerns. First, because Brown Boveri's descriptive literature indicates that initial maintenance must be performed after the first 200 operations the Army questions whether its bid satisfies the requirement of paragraph 3-3.2.1 of the specification that the minimum number of operations between inspection and maintenance shall be 2000 operations.

Brown Boveri's argument, that it intended to operate the circuit breaker 200 times in its factory and perform the initial adjustment there, prior to installation, is not persuasive because nothing in its bid indicated that intent. In this regard, a bidder may not be given the opportunity to explain the actual meaning of its bid in order to alter its responsiveness. Hughes Henry Equipment Co., supra. However, we do not believe that initial commissioning maintenance of this type, performed only once, shortly after installation, was necessarily precluded by the specification requirements relating to routine inspection and maintenance throughout the life of the equipment. Moreover, the commissioning adjustment in question, a simple tightening of the interruptor contacts, does not appear to be a material deviation in any event.


In this respect, where the defect in a bid is merely a matter of form and not of substance or pertains to some immaterial or inconsequential variation of a bid from the exact requirements of the solicitation, the defect must be waived or the bidder must be given an opportunity to cure it. Defense Acquisition Regulation (DAR) § 1-2.405. A defect or variation is immaterial when its significance as to quality, quantity, delivery or price is trivial or negligible when compared with the total cost or scope of supplies or work to be furnished. Champion Road Machinery International Corporation, B-200678, July 13, 1981, 81-2 CPD 27. Here, the bid defect cannot be said to affect quantity or delivery in any manner, and its effect upon quality is only relevant to the extent that the added cost of initial maintenance is significant, since a failure to perform it could conceivably affect durability. However, we believe that the added cost to the Government for performing the initial maintenance, a simple process of tightening the interruptor contacts, is trivial when

compared to Brown Boveri's bid price of \$4,241,631. Consequently, the Army should waive this defect in Brown Boveri's bid.

Second, the Army states that the descriptive literature furnished with Brown Boveri's bid is unclear as to whether its circuit breaker must be adjusted after every 1000 operations. If so, it would not satisfy the specification requirement for inspection and maintenance at intervals no more frequent than every 2000 operations. In this respect, the Army points out that paragraph 5(a) in Brown Boveri's Special Instructions for Installation and Operation of its heavy duty circuit breakers would require inspection maintenance every 1000 operations.

Whether the maintenance interval stated in this instruction satisfies the specification need not be decided (Brown Boveri's argues that the term "operation" is ambiguous) because the instruction has been modified by Brown Boveri's Supplementary Instruction Manual for Commissioning and Maintenance of Airblast Circuit Breakers, which document also accompanied Brown Boveri's bid. Paragraph 1.3 of the supplementary instruction, dealing with maintenance, states that "(i)n the event of conflict between these instructions and those already in existence, this manual shall hold good" and then after describing the first maintenance adjustment, states that this "must be repeated every 5000 operations thereafter," well in excess of 2000 operations under any interpretation. We therefore cannot agree that Brown Boveri's instruction is ambiguous on this question.

In summary, we do not believe that the descriptive literature included with Brown Boveri's bid deviated from the specification in a material manner and, consequently, we are by letter of today advising the Army that its bid should be considered for award.



Acting Comptroller General
of the United States